

REMARKS

Claims 11-20 through are pending in this application. In response to the Office Action dated June 17, 2004, the specification has been amended to correct an obvious typographical error at page 7. The reference numeral for the graded titanium nitride layer has been corrected to read as reference numeral 20. Support for the amendment appears at page 7, lines 21-22. Claims 11-20 have not been amended.

Care has been exercised to avoid the introduction of new matter. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure and claims. Applicant submits that the present Amendment does not generate any new matter issue.

Claims 11 and 18 were rejected under 35 U.S.C. § 103(a) as being anticipated over Kloster et al. (U.S. Pat. App. Pub. No. 2004/0041264, hereinafter "Kloster").

Claims 12-17 were rejected under 35 U.S.C. § 103(a) as being anticipated over Kloster in view of Paranjpe et al. (U.S. Pat. No. 6,461,675, hereinafter "Paranjpe") and in further view of Venkatesan (U.S. Pat. No. 6,326,301, hereinafter "Venkatesan").

Claim 19 was rejected 35 U.S.C. § 103(a) as being anticipated over Kloster in view of Paranjpe and in further view of Grill et al. (U.S. Pat. No. 6,265,779, hereinafter "Grill").

Claim 20 was rejected 35 U.S.C. § 103(a) as being anticipated over Kloster in view of Paranjpe and in further view of Venkatesan.

Applicants respectfully traverse each of the rejections under 35 U.S.C. § 103(a). The Examiner's attention is directed to the effective filing date of the present application. The present

application was filed on September 16, 2003 as a Divisional application under 37 CFR 1.53(b), claiming priority back to its prior parent, application Serial No. 10/001,805, filed on December 5, 2001, now U.S. Pat. No. 6,645,853. Thus, the present application has an effective filing date of December 5, 2001.

The primary reference relied on by the Examiner (Kloster) was filed on August 27, 2002, which is after the effective filing date of the present application. Thus, Kloster does not qualify as prior art under 35 U.S.C. § 102. Applicants submit that each of the rejections under 35 U.S.C. § 103(a) are not legally viable for at least this reason. Moreover, the remaining secondary references, alone or in combination fail teach or remotely suggest the claimed invention as whole. The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention under any statutory provision always rests upon the Examiner. *In re Mayne*, 41 USPQ2d 1451 (Fed. Cir. 1997); *In re Duel*, 34 USPQ2d 1210 (Fed. Cir. 1995); *In re Bell*, 26 USPQ2d 1529 (Fed. Cir. 1993). That burden has not been discharged. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejections under 35 U.S.C. § 103(a).

It is believed that pending claims 11-20 are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

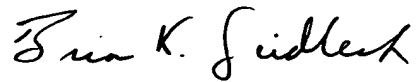
To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

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including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY

A handwritten signature in black ink, reading "Brian K. Seidleck". The signature is written in a cursive, flowing style.

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